76TH CONGRESS } HOUSE OF REPRESENTATIVES { DOCUMENT
1st Session } { No. 208

MARITIME COMMISSION'S RECOMMENDATIONS FOR LEGISLATION

LETTER FROM THE CHAIRMAN OF THE UNITED STATES MARITIME COMMISSION, TRANSMITTING THE MARITIME COMMISSION'S RECOMMENDATION FOR LEGISLATION

MARCH 16, 1939.—Referred to the Committee on Merchant Marine and Fisheries and ordered to be printed

UNITED STATES MARITIME COMMISSION,
Washington, March 16, 1939.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

MY DEAR MR. SPEAKER: In accordance with section 208, Merchant Marine Act, 1936, I have the honor to transmit herewith the Maritime Commission's recommendations for legislation.

These recommendations supplement the Commission's annual report transmitted to the Congress on January 3, 1939.

Very sincerely yours,

E. S. LAND, *Chairman.*

UNITED STATES MARITIME COMMISSION,
Washington, March 16, 1939.

To the Congress:

The Maritime Commission's communication of January 3, 1939, to the Congress, transmitting its report for the period which ended on October 25, 1938, stated that the Commission would subsequently transmit its recommendations for legislation. The Commission therefore respectfully submits the following legislative suggestions. These suggestions are arranged generally in the order of the dates of acts which would be amended by the suggestions, and in the numerical order of the sections thereof which would be affected.

To amend section 23, Shipping Act, 1916.

It is suggested that the present 2-year time limitation on orders of the Maritime Commission now provided in section 23, Shipping Act, 1916, be removed.

A similar 2-year limitation appeared in the earlier interstate commerce acts, and it is evident that the limitation in the Shipping Act, 1916, was based on those acts. The limitation was stricken from the

Interstate Commerce Act in 1920. The suggested change would eliminate the detail work involved in watching for expiration dates, and obviate the constant necessity of reissuing orders in which no changes are desired.

To amend section 19 (1) (b), Merchant Marine Act, 1920.

Section 19 (1) (b) of the Merchant Marine Act, 1920, authorizes and directs the Commission to make rules and regulations to meet conditions unfavorable to shipping in the foreign trade which arise as a result of foreign laws, rules, or regulations or from competitive practices of foreign vessels.

It is suggested that this section be rewritten to strengthen the authority thereunder, particularly—

(*a*) To specify its application to rates, as well as to practices.

(*b*) To clearly include American, as well as foreign carriers.

(*c*) To provide a penalty and adequate method of enforcement.

As a result of experience with rules and regulations under section 19 of the Merchant Marine Act, 1920, affecting foreign trade, it has become obvious that its provisions should be clarified and broadened.

It has been contended that inasmuch as the section refers specifically to competitive practices and methods, it has no application to rates. Various decisions of the courts have been cited to the effect that in questions arising under the Interstate Commerce Act, practices are entirely distinct from rates and that rates are not included in practices.

The last part of the subsection refers only to competitive methods and practices of foreign carriers. It is possible for American carriers to engage in unfair competitive methods and practices which, although detrimental to other American carriers, might not result in discrimination covered by section 17 of the Shipping Act, 1916.

The question also has been raised as to whether the Shipping Act, 1916, or the merchant marine acts contain any adequate provision whereby the Commission can enforce the rules and regulations issued under the present section 19.

It is believed that amendments as suggested will clarify these matters.

To amend section 3, Intercoastal Shipping Act, 1933.

It is suggested that section 3, Intercoastal Shipping Act, 1933, be amended to provide that in cases involving the suspension of rates, the burden of proof is on the carrier. The Commission believes this to be the case under present law, as has been inferred in many decisions of the Commission's predecessors. If the rule were otherwise, the carrier might remain mute and require the Commission or the complainant to present evidence, the bulk of which may be in the possession of the carrier, a situation evidently not intended by Congress when it established the existing law.

The Interstate Commerce Act, as amended, in section 15, contains a provision which places the burden of proof on the carrier with respect to any rate, fare, or charge sought to be increased. The Interstate Commerce Commission, however, has maintained that in all cases where that Commission has suspended a new rate, fare, or charge, involving a decrease in the former rate, that the burden of proving the reasonableness of the new rate is on the carrier, a position consistent with that of the Maritime Commission.

This position has been challenged by certain carriers but has not been determined by the courts. Clarification of the statute as suggested would simplify its administration.

Regulation of marine terminals.

The Commission's present jurisdiction over marine terminals is by reason of their inclusion in the definition of "other person subject to this act" in the Shipping Act, 1916. Regulatory provisions of that act which apply to such other persons under present law are—

(*a*) Section 15 (filing copies of agreements for approval of Commission).

(*b*) Section 16 (unlawful to give undue preference, false billing, etc.).

(*c*) Section 17, paragraph 2 (establish just and reasonable regulations and practices relating to receiving, handling, storing, and delivery of property).

(*d*) Section 20 (disclosing of information concerning nature, routing, etc., of property).

(*e*) Section 21 (furnishing of special reports, etc., if Commission requires them).

(*f*) Section 22 (reparation).

(*g*) Sections dealing with orders of Commission (investigations, penalties, etc.).

Marine terminals, in general, offer their facilities as a public service, and as such the shipping public is entitled to know their tariffs in advance and to be protected against discriminatory treatment, rebates, etc.

The movement for more complete regulation of terminal rates and practices had its inception in the National Recovery Administration days. The National Recovery Administration system of codes of fair practice was responsible for bringing together groups of terminal operators into associations or committees, regional in character, for the purpose of formulating codes.

After the Supreme Court's decision on the N. R. A., these groups continued in existence for the principal purpose of obtaining codes of fair competition through agreement and were making progress when the original water-carrier bill was introduced in the Seventy-fourth Congress. This bill included wharfingers and was later split to cover them under a separate bill. The conviction was expressed that any regulation of water carriers which would not cover terminal facilities would be vitally defective. While there was much opposition to some provisions of the wharfinger bill, the majority of the terminal operators were in favor of the principle.

It is understood that the marine terminal business is not a profitable one under existing circumstances. The railroads admittedly lose large sums of money on marine terminal operations. In some cases their use is offered without charge as a solicitation device. It is also understood that marine terminals built and operated by public bodies are often operated at a loss. Independent operators, especially those which have no other income-producing activity, are in unenviable financial position. Nonrail terminals cannot compete with rail terminal facilities operated at unremunerative rates. The business is now characterized by cutthroat competition. Ships and cargo owners are in a position to bargain up and down the water front for the use of a public facility, and a shipper who uses a terminal

having reasonable rates and reasonably fair free-time privileges, incurs a greater cost than a competitor who is bargaining, and so finds himself at a disadvantage when it comes to marketing. To correct these conditions, it is believed to be unnecessary to establish an elaborate regulatory system for the terminal industry, but certain additional provisions are necessary to make regulation effective.

The term "in connection with a common carrier by water," employed in connection with the definition of "other person subject to this act," in section 1, Shipping Act, 1916, apparently so limits the extent of the Commission's jurisdiction over terminals as to produce unfair results and render regulation one-sided. A terminal, if a public facility, should be regulated equally "in connection with" everyone who uses it, whether the user be a common, a contract, or a private carrier by water. This is not to be confused with extension of regulation over the contract or private carrier per se; it concerns regulation of the terminal.

If the terminal is a private one and is used only for the handling of goods of the owner of the terminal and does not enter the public field, the jurisdiction should not be extended to such a facility. But if a private terminal enters the public field to any extent, it should to that extent be regulated. It is suggested that the definition in question be amended clearly to cover such situations, except to the extent that such facilities are under the jurisdiction of the Interstate Commerce Commission under present law.

Pertinent parts of section 14, Shipping Act, 1916, which obviously should be applied to marine terminals, are those which prohibit deferred rebating, retaliations, unfair or discriminatory contracts with shippers, or discriminations relating to space or the adjustment of claims, and prescribe penalties for such violations. The extension of these provisions to embrace marine terminals is suggested.

Section 18 of the Shipping Act, 1916, relates only to common carriers by water in interstate commerce, and provides for the establishment of just and reasonable rates, practices, etc., the filing of rates, etc., and prohibits charging more than the amount on file, and gives the Commission the power under certain circumstances to prescribe rates, etc. These same powers are necessary to the effective regulation of marine terminals, and their extension to such terminals is suggested.

The extension of the application of the Intercoastal Shipping Act, 1933, to cover marine terminals also is suggested, so that the regulation of such terminals will be made consistent with other regulatory provisions administered by the Commission. This may be accomplished by a method analogous to that adopted by the Congress in 1938, when it extended the provisions of the same act so as to make it applicable to every common carrier by water in interstate commerce.

To amend section 201 (f), Merchant Marine Act, 1936.

In carrying out its long-range construction program, the Commission has drawn on the Navy for the loan of expert technical assistance. The Commission's ship-construction program requires skilled technical advice and supervision. Detail to the Commission involves increased responsibility, and service pay and allowances do not constitute the equivalent of compensation for work of similar grade under classification applied to civilian employees.

The Commission suggests that additional pay be authorized when it is necessary to borrow skilled assistance from the Army, Navy, or Coast Guard. The suggestion is based on the precedents established by Congress in the cases of the Engineer Commissioner of the District of Columbia and Army officers serving with the Mississippi River Commission. In these cases the Army continues to pay the regular official pay, and the agency with which the officer is serving pays an additional amount to bring his total compensation up to the amount fixed for his position in such agency.

Training—To amend section 216, Merchant Marine Act, 1936.

The purpose of this suggestion is to make effective the recommendations of the Commission in its recent report to Congress on the training of American citizens to serve as licensed and unlicensed personnel in the merchant marine.

The cadet system as now constituted rests entirely upon contracts between the Maritime Commission and its managing agents or subsidized operators. It is suggested that the Commission be authorized to extend and develop the cadet system as recommended in the report, through the use of the facilities of other governmental agencies and of private concerns, such as shipyards, plants, and industrial and educational organizations. The authority should be limited to the training of cadets who hope to become licensed officers of the merchant marine, in keeping with the Commission's decision that increases in the supply of unlicensed personnel through its training program be postponed.

It is further suggested that the Commission be authorized to prescribe, conduct, and supervise extension and correspondence courses for the benefit of members of the licensed and unlicensed personnel of the merchant marine and of cadets upon their application for such training, and to make such courses available upon such terms as the Commission may prescribe.

The preparation, editing, and publishing of textbooks and other aids to instruction may require the special services of experts, including correspondence schools. The authority to employ persons, firms, and corporations on a contract or fee basis for this purpose should, therefore, be included.

New section 510, Merchant Marine Act, 1936.

If the objectives expressed in section 101 of the act regarding a merchant marine for the United States are to be realized, the necessity for the construction of new vessels is beyond question. Of the 153 vessels in the subsidized fleet serving essential routes in foreign trades, 133 will be 20 years old in 1942 (not including Government-owned lines). A replacement of these vessels by new tonnage will fall far short of our national-defense requirements. The bulk of the domestic fleet is made up of antiquated vessels. About 90 percent of the dry cargo and combination vessels in domestic trade are well over 15 years old. Seventy percent of such vessels are 20 years old or more, and a considerable number exceed 30 years in age. A sound policy should envisage replacement and new construction for both the foreign and domestic trades.

The continued operation, on the essential foreign-trade routes and in the protected trades, of old or obsolete tonnage which should be retired from service, constitutes a major obstacle to the attainment of

the objectives of the Commission's long-range-construction program and to the realization of the objectives expressed in the act. The Government is responsible for this obstacle to the extent that legislative restrictions and national policy prevent or render inadvisable the disposal of vessels in the most generous world market otherwise available to their owners.

Under section 9 of the Shipping Act, 1916, as amended, the Commission may prevent the sale or transfer to foreign registry of American-flag vessels. It is doubtful whether the Commission should, under present circumstances, permit the sale of our older vessels for foreign-flag operation. Considerations of policy argue against their sale for scrapping abroad. Furthermore, whatever national-defense value these older vessels have should be preserved for the United States, in view of the shortage of vessels in the light of the Navy's potential need. It is also the policy of the Government, as expressed in the Merchant Marine Act, 1936, that vessels over 20 years of age should be replaced. Unless owners of the older vessels have some outlet whereby they can dispose of them, it is idle to expect them to contract for new ones.

Prices for scrap in the United States market are not sufficiently remunerative to offer an inducement to replace old ships. Prices available in the world market are far more liberal. Recently a foreign company offered to purchase a number of old ships from an American operator. The terms of the offer were far more liberal than any obtainable in the American market. The Commission, however, refused to approve the transfer to foreign registry for reasons of public policy. Since public purpose makes inadvisable the disposal of old American-flag vessels in world markets, there should be no complaint if the Government supplies an outlet to take the place of that closed by policy.

In view of these considerations, and in order to encourage the construction of new, safe, and efficient vessels to carry the domestic and foreign water-borne commerce of the United States, it is suggested that the Commission be authorized to acquire obsolete vessels not less than 17 years old which have been owned by citizens of the United States for at least 3 years prior to the date of such acquisition, in exchange for a credit on the purchase of a new vessel from the Commission (including purchase under section 714, as amended) or on a new vessel constructed in a domestic shipyard and documented under the laws of the United States.

Such credits resulting from a "trade-in" of solder vessels should not be payable in cash but should be realized by the shipowner only in the form of new vessels. To this extent he would not be made whole from the restrictions of section 9 of the Shipping Act, 1916, but at least the situation will not result in stalemate, as appears to be the practical result of the present system.

The allowance should be the fair and reasonable value of the old vessel, as determined by the Commission after consideration of the following factors:

(1) The scrap value of the obsolete vessel, both in American and in foreign markets.

(2) The depreciated value based on a 20-year life.

(3) The market value thereof for operation in the world trade, or in the foreign or domestic trade of the United States.

Vessels acquired under the proposal can be placed in the laid-up fleet if it is desired to preserve their national-defense value for the United

States, or can be scrapped as already provided in the act. The Government would thus be reimbursed in the form of property or cash, except insofar as there is a difference occasioned by considerations of national policy which concern every other citizen as well as the shipowner, and would realize the advantage of new ships as well.

Considerable study has been given to the advisability of a proviso to the effect that in the turn-in of vessels purchased from the Government, the credit should be determined by a formula similar to that now incorporated in section 507 of the Merchant Marine Act, 1936. The theory behind such a proviso would be that the allowance might in some cases he disproportionate to the price originally paid the Government, especially if no attempt be made to evaluate guaranteed operation clauses in some of the original sales contracts. It is recommended that no such proviso be incorporated in the suggestion. A proviso of that nature would in practical effect absolutely prevent the absorption of the older vessels so purchased, since there could be little, if any, credit in view of their age. Under such a proviso, the present vessels in that category might not be replaced at all, and to that extent retard the Commission's construction program. Even if additional new vessels were built by the companies that own them, the old vessels might continue in operation indefinitely. In either event, these vessels would be a menace to the domestic trades. They could be sold by their owners for operation in such trades and would probably prevent the building of a number of new vessels for those trades. It should be remembered that under this proposal the Government would offer, not cash, but a credit on new ships in exchange for such old vessels and would derive as much public benefit from their disposal as from the disposal of vessels not purchased from the Government. It is difficult logically to reconcile a plan that would presuppose entirely different values for identical ships because of some circumstance in the past ownership of one which does not apply in the case of the other.

The menace of continued operation of the older vessels in competition with vastly more expensive new ships should, to some extent, be removed. Present Commission policy provides a measure of sterilization of older vessels preserved for the national defense, but a statutory provision is deemed desirable, because the shipowner, when contemplating new construction, must look ahead not only into the immediate future, but, if prudent, must weigh possible eventualities which may occur during the entire economic life of a new vessel. To the extent that competition is probable or possible from written-down vessels which may be released by the Government, new construction is retarded.

The return to commercial operation of vessels acquired under the proposal or of vessels now in the Commission's laid-up fleet should be prohibited after any such vessels become 20 years old, except during a period in which vessels may be requisitioned for national defense, or except as otherwise provided in the act for the employment of the Commission's vessels in steamship lines on trade routes exclusively serving the foreign trade of the United States.

To amend section 603 (c), Merchant Marine Act, 1936.

Present law relating to the method of payment of the operating-differential subsidy provides that the amount of such subsidy be determined and payable on the basis of final accounting made at the

end of each year or other period. The Commission may approve payments during the year or other period in amounts not exceeding 75 percent of the amount estimated to have accrued on account of such subsidy if the contractor has furnished security to insure the refund of overpayment.

It is suggested that the payment of an additional 15 percent be permitted but only after the contractor has audited the voyage account and the Commission's auditors have verified the same. This procedure would be conservative and would in no way jeopardize the Government's interests. There would still be a considerable margin for safety under suggested procedure, and furthermore, security to insure the refund of any possible overpayment should be required.

To any extent that the Government holds back the operating subsidy the contractor is at a financial disadvantage in comparison with his foreign competitors; since the entire subsidy covers costs, the American operator must pay in excess of those of his foreign competitor.

In view of other provisions of the act designed to insure that the contractors maintain adequate working capital, it is believed to be undesirable for the Government to hold back for a considerable period of time a greater portion of sums known to be due the contractor than are necessary to protect the Government's interests.

Minimum sales and charter prices—To amend sections 705 and 706 (b), Merchant Marine Act, 1936.

The Commission suggests that a statutory "floor," similar to that provided by title V and section 714, as amended, be placed under the price at which vessels newly constructed for Commission account (or built under title V and taken back because of buyer default) may be chartered or sold.

If new Commission-owned vessels could be thrown on the market, for either charter or sale, at bargain prices, it would seriously retard new construction by private operators, who would fear the adverse effect on the value of their own investment and the competition of cheap new tonnage. Other private operators would hope for such bargains in lieu of entering into construction contracts. The private industry in general, and certainly those operators who cooperate with the Commission and build ships under title V, should have every possible guaranty that such situations will not occur, especially in the case of sales. Furthermore, bargains in the charter or sale of such vessels represent large financial loss to the Government.

It is, therefore, suggested that appropriate amendments to sections 705 and 706 (b) of the act, designed to prevent such situations, be made.

To amend section 714, Merchant Marine Act, 1936.

Section 714 is applicable in cases where the introduction of new vessels on essential trade routes cannot be effected under title V. When the cash payment required by title V was changed by the 1938 amendments to 25 percent of the estimated foreign construction cost, provision was inserted in section 714 for payment, upon exercise of the purchase option by a charterer under that section, of interest based upon the foreign construction cost, but the basic charter hire is still stated in terms of American construction cost, and provision is made for the manner of determination of the purchase price and

terms of sale principally by reference to the provisions of title V. It is not clear, however, exactly what provisions of title V are incorporated by reference into section 714. This results in difficulties of administrative interpretation and in possible inequalities due to the use of different construction costs. It is possible that the cost of a vessel to an operator under the present provisions, as compared to the cost under title V, may vary according to the time of exercise of the option to purchase.

An amendment of section 714 is suggested in order to clarify its provisions and to bring it in line with the other provisions of the act, as amended, by basing both charter hire and interest on the estimated foreign construction cost at which the vessel may be purchased by the operator upon exercise of the option contained in its charter. It is suggested that the amendment should specify an annual charter hire of 8½ percent (equivalent to 5 percent depreciation plus 3½ percent interest) of such construction cost, in place of the present provision of 5 percent of the American construction cost. It should also specify a purchase price upon exercise of the option to buy, which should be the price at which a vessel would be sold if constructed for use in the foreign trade under title V less depreciation based upon a 20-year life, and a cash payment of 25 percent of such purchase price at the time of purchase. The cost of acquisition of vessels under the section revised in the manner suggested would approximate closely, and be consistent with, the cost of the vessels under the provisions of title V.

General penalty provision—To amend section 806, Merchant Marine Act, 1936.

A general penalty provision is suggested, applicable to violations of rules, regulations, or orders of the Commission issued in the exercise of duties and functions transferred to the Commission by the Merchant Marine Act, 1936, as well as to those granted by that act itself.

Penalties for violations of various sections of the Shipping Act, 1916, are provided in those sections. Section 32 of that act contains a general penalty provision applicable to violations of the act. Section 204 (c) of the Merchant Marine Act, 1936, indicates that Congress assumed a penalty existed for violation of orders of the Shipping Board, since it provides that orders of the Commission should be enforced in the same manner and violation of such orders should subject the person or corporation guilty of such violation to the same penalties or punishment theretofore provided for violation of orders of the Board. But no such penalty exists. Provision for such penalties is believed desirable.

To amend section 1104 (a) (8), Merchant Marine Act, 1936.

The Commission suggests section 1104 (a) (8) of the Merchant Marine Act, 1936, be amended to make it clear that fishing vessels may be the subject of an insured mortgage under title XI relating to ship-mortgage insurance. While the general counsel has rendered an opinion to the effect that fishing vessels are covered by title XI, it is thought desirable, because of some inconsistency in the language of sections 1101 (b) and 1108 (a) (8), that the law be made entirely clear on this point.

Very sincerely yours,

E. S. LAND, *Chairman.*

○